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COVERSHEET
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Attorney for Party In Interest
Boise Gowan LLC

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA

In re:) Case No. BK-S-06-10725 LBR
 USA COMMERCIAL MORTGAGE) Case No. BK-S-06-10726 LBR
 COMPANY,) Case No. BK-S-06-10727 LBR
) Case No. BK-S-06-10728 LBR
 Debtor) Case No. BK-S-06-10729 LBR

In re:) Chapter 11
 USA CAPITAL REALTY ADVISORS, LLC.)
)
 Debtor)

In re:) Jointly Administered Under
 USA CAPITAL DIVERSIFIED TRUST) Case No. BK-S-06-10725 LBR
 DEED FUND, LLC.)
)
 Debtor)
)
) Date of Hearing: August 4, 2006
) Time of Hearing: 1:30P.M.

In re:) Affects:
 USA CAPITAL FIRST TRUST) ☒ USA Commercial Mortgage Company
 DEED FUND, LLC.) ☐ USA Capital Diversified Trust Deed Fund, LLC
) ☒ USA Capital First Trust Deed Fund, LLC
 Debtor) ☐ USA Securities, LLC
 In re:) ☐ USA Realty Advisors, LLC
 USA SECURITIES, LLC.) ☐ All Debtors
)
 Debtor)

COVERSHEET FOR DECLARATION OF ROBERT RUSSELL IN SUPPORT OF DEBTORS'
AMENDED MOTION FOR AUTHORITY, SUBJECT TO ADVANCE APPROVAL BY NEVADA
MORTGAGE LENDING DIVISION, FOR FERTITTA ENTERPRISES OR ITS AFFILIATE TO
PROVIDE AN ADDITIONAL ADVANCE FOR THE RIO RANCHO EXECUTIVE PLAZA LOAN
SERVICED BY DEBTOR USA COMMERCIAL MORTGAGE COMPANY [AFFECTS DEBTOR
COMMERCIAL MORTGAGE COMPANY AND DEBTOR USA CAPITAL FIRST TRUST DEED
FUND, LLC]

Dated this 4th day of August, 2006.

DEANER, DEANER, SCANN,
 MALAN & LARSEN

By: 

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Aug-04-06

05:09pm From-Kinko's Boise Downtown

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**UNITED STATES BANKRUPTCY COURT
 DISTRICT OF NEVADA**

In re:
 USA COMMERCIAL MORTGAGE COMPANY,
 Debtor.

In re:
 USA CAPITAL REALTY ADVISORS, LLC,
 Debtor.

In re:
 USA CAPITAL DIVERSIFIED TRUST DEED
 FUND, LLC,
 Debtor.

In re:
 USA CAPITAL FIRST TRUST DEED FUND, LLC,
 Debtor.

In re:
 USA SECURITIES, LLC,
 Debtor.

Affects:
☐ All Debtors
☒ USA Commercial Mortgage Company
☐ USA Securities, LLC
☐ USA Capital Realty Advisors, LLC

Case Nos. BK-S-06-10725 LBR
 Case Nos. BK-S-06-10726 LBR
 Case Nos. BK-S-06-10727 LBR
 Case Nos. BK-S-06-10728 LBR
 Case Nos. BK-S-06-10729 LBR

Chapter 11

Jointly Administered Under
 Case No. BK-S-06-10725 LBR

**DECLARATION OF ROBERT A.
 RUSSELL IN SUPPORT OF DEBTORS'
 AMENDED MOTION FOR
 AUTHORITY, SUBJECT TO ADVANCE
 APPROVAL BY NEVADA MORTGAGE
 LENDING DIVISION, FOR FERTITTA
 ENTERPRISES OR ITS AFFILIATE TO
 PROVIDE AN ADDITIONAL
 ADVANCE FOR THE RIO RANCHO
 EXECUTIVE PLAZA LOAN SERVICED
 BY DEBTOR USA COMMERCIAL
 MORTGAGE COMPANY [AFFECTS**

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Date of Hearing: OST Requested
Time of Hearing: OST Requested

ROBERT A. RUSSELL, under penalties of perjury, hereby declares on this ____ day of August, 2006, that:

1. I am the Manager of Borrower Rio Rancho Executive Plaza, LLC, a New Mexico limited liability company ("Rio Rancho" or "Borrower"). I make this Declaration based upon my own personal knowledge and based upon the regularly kept books and records of Rio Rancho. I personally have over 37 years of experience managing loan projects such as the Rio Rancho Loan.

2. On January 17, 2006, Debtor USA Commercial Mortgage Company ("USACM") as Servicer originated a loan (the "Rio Rancho Loan") from certain Direct Lenders to Borrower Rio Rancho, evidenced by a Loan Agreement dated January 17, 2006 (the "Rio Rancho Loan Agreement") and other loan documentation.

3. The Rio Rancho Loan is the source of funding for a construction/development project being developed by the Borrower (the "Rio Rancho Project") for a 48,000 square foot office condominium project in Rio Rancho (Albuquerque), New Mexico.

4. To my knowledge there are currently 32 Direct Lenders for the Rio Rancho Loan. Debtor USA First Trust Deed Fund, LLC ("First Trust Deed Fund") is one of the 32 current Direct Lenders for the Rio Rancho Loan, and has a \$70,000 undivided interest in the Rio Rancho Loan funding.

5. The original principal balance of the Rio Rancho Loan when it was originated on January 17, 2006, was \$2,000,000. Section 3.2 of the Construction Loan Agreement dated January 17, 2006, between the Borrower and the Direct Lenders for the Rio Rancho Loan, provides in part as follows: "3.2 Increase in Loan Amount. From the Effective Date through and including January 1, 2007, [Direct] Lender[s] and USA [CM] shall have the exclusive right, but

1 not the obligation, to increase the Loan Amount to an amount not to exceed Six Million One
2 Hundred Thousand Dollars (\$6,100,000). All amounts that [Direct] Lender[s] may advance after
3 the Effective Date shall increase the Loan Amount and be used for the following purposes: (i) to
4 pay loan fees and closing costs in connection therewith, (ii) to fund the Interest Reserve (defined
5 below), and (iii) to pay Project Costs in accordance with the Approved Budgets. Upon each
6 increase in the Loan Amount, Borrower shall execute amendments to the Note and the Deed of
7 Trust which shall memorialize the increase in the Loan Amount, the change in the identity of the
8 persons and entities which comprise [Direct] Lender[s] and their respective undivided interests in
9 the Loan." The approved budget is \$6,100,000.00.

10 6. The interest rate for the Rio Rancho Loan is 12.5% per annum.

11 7. The Guarantors of the Rio Rancho Loan are Russell/AD Development Group, LLC,
12 and myself, Robert A. Russell, individually (the "Guarantors").

13 8. Pursuant to a Fee Agreement dated January 17, 2006, between the Borrower and
14 Debtor USACM, Borrower agreed to pay the following Exit Fee to Debtor USACM: "4. Exit
15 Fee. Borrower shall pay to USA[CM] an exit fee equal to 40% of the net profits from the sale of
16 the Property, payable from the closing of each sale when all of the Property is sold. The term 'net
17 profits' as used herein means the total consideration paid for the Property less customary and
18 necessary closing costs; provided, however, that [if] a real estate brokerage commission is paid to
19 Borrower or an affiliate of Borrower, then the maximum that may be deducted to calculate net
20 profit shall be 2% of the total consideration."

21 9. The Rio Rancho Loan is secured by a first priority Deed of Trust, Assignment of
22 Rents, Security Agreement and Fixture Filing dated January 17, 2006, between the Borrower as
23 Trustor and the Direct Lenders as Beneficiaries (the "Deed of Trust") on the Rio Rancho Project.
24 The Deed of Trust was recorded in Sandoval County, New Mexico on January 20, 2006 in Book
25 409 at Page 3317 of Sandoval County Records. The Deed of Trust provides that it secures the
26 initial \$2,000,000 advance on the Rio Rancho Loan, and also states that it is "understood that the
27 Note amount may be increased to \$6,100,000".
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10. The Maturity Date of the Rio Rancho Loan is January 20, 2007 (twelve months from the date the Deed of Trust was recorded).

11. On March 17, 2006, an additional advance of \$250,000 was made on the Rio Rancho Loan, which was evidenced by a First Amendment to Deed of Trust (the "Trust Deed Amendment") and a First Amendment to Loan Documents dated March 17, 2006 (the "First Amendment") signed by the Borrower, the Guarantors, and Debtor USACM as Attorney-in-Fact for the Direct Lenders, evidencing the increase in the Loan Amount for the Rio Rancho Loan from \$2,000,000 to \$2,250,000.

12. The construction on the Rio Rancho Project commenced in February 2006, shortly after the Rio Rancho Loan was closed. However, the Borrower is in desperate need of additional funding to complete the construction of the Rio Rancho Project. The Borrower has presold one of the five buildings in the Rio Rancho Project to a medical group, and has also leased one of the buildings to Waste Management, Inc. However, if the Borrower is unable to get immediate additional funding for the uncompleted Rio Rancho Project, the Borrower will be forced to abandon the Rio Rancho Project for lack of construction funding, and let the ensuing litigation take its course.

13. The Borrower has very few feasible alternatives for the partially completed Rio Rancho Project. The Rio Rancho Project currently consists of several building pads in a fenced area on vacant land. The contractor is threatening to file liens if it is not paid immediately, and the Borrower also anticipates litigation by the lessee, Waste Management, Inc., and the medical group that is purchasing one of the buildings from the Borrower if the Borrower is forced to abandon the Rio Rancho Project. The Borrower's refinancing options for a partially completed construction project are very expensive.

14. It is my understanding that Fertitta Enterprises or an affiliate of Fertitta Enterprises ("Fertitta") has offered (the "Fertitta Offer"), subject to the advance approval of the Nevada Mortgage Lending Division, to make an additional advance (the "Additional Advance") of \$3,773,000 on the Rio Rancho Loan, which would increase the Loan Amount on the Rio Rancho

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6 by the Borrower. A completed construction project that is a candidate for a sale to an investor or a
7 take-out loan from a permanent financing source is much more likely to generate the funds needed
8 to pay off the Rio Rancho Loan than an uncompleted construction project that is likely to be
9 encumbered with mechanic's liens and embroiled in other litigation.

10 17. Approving the Fertitta Offer will eliminate a potential source of contention or
11 litigation between the Debtors, the existing Direct Lenders, and the Borrower regarding whether or
12 not there are additional funding obligations to the Borrower.

13 18. Approving the Fertitta Offer will also prevent a collapse of the construction
14 funding for the Rio Rancho Project and avoid claims litigation resulting from the collapse of the
15 Rio Rancho Project that would likely involve the Debtors, the Direct Lenders on the Rio Rancho
16 Loan, the Borrower, the guarantors of the Rio Rancho Loan, and the contractor for the Rio Rancho
17 Project.

18 19. Approving the Fertitta Offer should result in the repayment in full of the Rio
19 Rancho Loan after the Rio Rancho Project is completed, which will benefit not only the Debtors'
20 bankruptcy estates, but also benefit the Direct Lenders for the Rio Rancho Loan.

21 Executed this 4~~th~~ day of August, 2006.

22 
23 Robert A. Russell
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